Office-Supreme Court, U.S.
FILED
FEB 14 1983
ALEXANDER L. STEVAS,
CLERK

No. 81-2386

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

PHILIP DELCOSTELLO,

Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ET AL.,

Respondents.

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF RESPONDENT LOCAL 557, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

CARL S. YALLER,
(Counsel of Record),
BERNARD W. RUBENSTEIN,
EDELMAN AND RUBENSTEIN, P.A.,
Ten Light Street — Suite 2400,
Baltimore, Maryland 21202,
(301) 752-6160,
Attorneys for Respondent, Local 557, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

The Daily Record Co., Baltimore, MD 21202

QUESTIONS PRESENTED FOR REVIEW

1. Did the lower courts correctly apply Maryland's limitations period for the vacation of arbitration awards to the petitioner's § 301 claims against a union?

2. Did the lower courts properly decline to apply the statute of limitations found at 29 U.S.C. § 160(b) to an action brought pursuant to the Labor Management Relations Act, in lieu of Maryland's applicable limitations period for the vacation of arbitration awards?

3. Did the lower courts correctly allow retrospective application of *United Parcel Service, Inc. v. Mitchell* to the facts of this case?

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED FOR REVIEW	i
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTION	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	5
ARGUMENT:	
I. State Statutes Of Limitations Governing Vacation Of Arbitration Awards Apply To All Parties In A Post-Arbitration Action Alleging Breach Of The Union's Duty Of Fair Representation And Breach Of A Collective Bargaining Agreement	6
II. Adoption Of The Six Month Limitations Period Of The National Labor Relations Act Is Inappropriate Where State Law Offers An Analogous Limitations Period	11
III. The Court's Ruling in *United Parcel Service, Inc. v. Mitchell* Should Not Be Limited To Prospective Application	15
CONCLUSION	23
APPENDIX	25

TABLE OF AUTHORITIES

Cases

	PAGE
Abrams v. Carrier Corp., 434 F.2d 1234 (2d Cir. 1970)	18
American Tobacco Co. v. U.S., 328 U.S. 781 (1946)	17
Auto Workers v. Hoosier Corp., 383 U.S. 696 (1966)	*passim*
Baker v. Bell, 630 F.2d 626 (4th Cir. 1980)	16
Barbarino v. Anchor Motor Freight, Inc., 421 F. Supp. 1003 (W.D. N.Y. 1976)	20
Bell v. Wolfish, 441 U.S. 520 (1979)	3
Bronze Shields, Inc. v. N.J. Dept. of Civil Serv., 667 F.2d 1074 (3d Cir. 1981)	20
Brooks v. Southwestern Transportation Co., 97 LRRM 2616 (N.D. Tex. 1978)	18
Butler v. Local U. 823, International Brotherhood of Teamsters, 514 F.2d 442 (8th Cir. 1975) *cert. denied*, 423 U.S. 924 (1976)	18
Campbell v. City of Haverhill, 155 U.S. 610 (1895)	11
Cash v. Califano, 621 F.2d 626 (4th Cir. 1980)	16
Cates v. Trans World Airlines, Inc., 561 F.2d 1064 (2d Cir. 1977)	23
Chattanooga Foundry v. Atlanta, 203 U.S. 390 (1906)	11
Chevron Oil Co. v. Huson, 404 U.S. 97 (1971)	*passim*
Cope v. Anderson, 331 U.S. 461 (1947)	11
DeArroyo v. Sindicato de Trabajadores Packing House, 425 F.2d 281 (1st. Cir. 1970)	18
DeLorto v. United Parcel Service, Inc., 401 F. Supp. 408 (D. Mass. 1975)	20

PAGE

DeVries v. Motor Freight System, 91 LRRM 2764 (N.D. Ohio 1976) 18

Elrod v. Western Conference of Teamsters, 77 LRRM 2619 (C.D. Cal. 1971) 19

Gallagher v. Chrysler Corp., 613 F.2d 167 (6th Cir. 1980) 18

General Drivers v. Riss & Co., 372 U.S. 517 (1963) 2

Grant v. Mulvihill Brothers Motor Service, 428 F. Supp. 45 (N.D. Ill. 1976) 18

Grigg v. U.S., 277 U.S. 582 (1928) 12

Hana Heating & AC Co., Inc. v. Sheet Metal Workers Local Union 38, 378 F. Supp. 1001 (S.D. N.Y. 1974) 20

Hanover Shoe, Inc. v. United Shoe Machinery Corp., 392 U.S. 481 (1968) 17

Hill v. Aro Corp., 275 F. Supp. 482 (N.D. Ohio 1967) 20

Hines v. Anchor Motor Freight, Inc., 424 U.S. 554 (1976) ..... *passim*

Holzsager v. Valley Hospital, 646 F.2d 792 (2d Cir. 1981) 22

Howard v. Aluminum Wkrs. Intern. U., 418 F. Supp. 1058 (E.D. Va. 1976), aff'd 589 F.2d 771 (4th Cir. 1978) 18

Howerton v. J. Christenson Co., 76 LRRM 2937 (N.D. Cal. 1971) 20

Humphrey v. Moore, 375 U.S. 335 (1964) 2

International Bro. of Teamsters, Local 249 v. Motor Freight Express, Inc., 356 F. Supp. 724 (W.D. Pa. 1973) 20

Kennedy v. Wheeling-Pittsburgh Steel Corp., 81 LRRM 2349 (4th Cir. 1972) 18

PAGE

Kikos v. International Brotherhood of Teamsters, 526 F. Supp. 110 (E.D. Mich. 1981) 21

Knetsch v. United States, 364 U.S. 361 (1960) 3

Lawson v. Local 100, ___ F.2d ___, No. 81-3722 (6th Cir. Jan. 17, 1983) 20

Lehto v. Underground Construction Co., 69 Cal. App. 3d 933 (1977) 19

Lewis v. Harbison-Walker Refractories, 542 F. Supp. 1381 (N.D. Ind. 1982) 21

Mauget v. Kaiser Engineers, Inc., 546 F. Supp. 486 (S.D. Ohio 1982) 21

McCluny v. Silliman, 28 U.S. 676 (1830) 11

Mikelson v. Wisconsin Bridge and Iron Co., 359 F. Supp. 444 (W.D. Wis. 1973) 18

National Broadcasters v. F.C.C., 554 F.2d 1118 (D.C. Cir. 1976) 16

Northern Pipeline Const. v. Marathon Pipe Line Co., ___ U.S. ___, 102 S. Ct. 2858 (1982) 23

O'Sullivan v. Felix, 233 U.S. 318 (1914) 11

Price v. Southern Pacific Transportation Co., 586 F.2d 750 (9th Cir. 1978) 18

Ramsey v. Mine Workers, 401 U.S. 302 (1971) 14

Rodrigue v. Aetna Casualty Co., 395 U.S. 352 (1969) 15

Runyon v. McCrary, 427 U.S. 160 (1976) 11

Rush v. Savchuk, 444 U.S. 320 (1980) 22

Sanderson v. Ford Motor Co., 483 F.2d 102 (5th Cir. 1973) 18

Schaefer v. First National Bank of Lincolnwood, 509 F.2d 1287 (7th Cir. 1975), *cert. denied*, 425 U.S. 943 (1976) 23

Seider v. Roth, 17 N.Y.2d 111, 269 N.Y.S.2d 99, 216 N.E.2d 312 (1966) 22

PAGE

Service Emp. Intern. Union, Etc. v. Office Ctr., Etc., 670 F.2d 404 (3d Cir. 1982) 21

Smart v. Ellis Trucking Co., Inc., 409 F. Supp. 129 (E.D. Mich. 1976), rev'd 580 F.2d 215 (6th Cir. 1978) 19

United Mine Workers of Am. v. Jones & Laughlin Steel Corp., 378 F. Supp. 1206 (W.D. Pa. 1974) 20

United Parcel Service, Inc. v. Mitchell, 451 U.S. 56 (1981) ..... *passim*

United Steelwrks. of Am. v. Warrior & Gulf N. Co., 363 U.S. 574 (1960) 10

Vaca v. Sipes, 386 U.S. 171 (1967) 12

Valencia v. Anderson Bros. Ford, 617 F.2d 1278 (7th Cir. 1980) 16

Warren v. I.B.T., 544 F.2d 334 (8th Cir. 1976) 18

Statutes

15 U.S.C. § 15b 12

28 U.S.C. § 1254(1) 2

29 U.S.C. § 160 (b) [National Labor Relations Act, as amended, § 10 (b)] ..... *passim*

29 U.S.C. § 185 (a) [Labor Management Relations Act of 1947, as amended, § 301] ..... *passim*

35 U.S.C. § 286 12

38 U.S.C. § 784 12

Md. Cts. & Jud. Proc.:

§ 3-206 (b) 9

§ 3-224 ..... 3, 8

Md. R.P. E2 ..... 3, 9

Md. R.P. E4 ..... 3, 9

No. 81-2386

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

PHILIP DELCOSTELLO,

Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ET AL.,

Respondents.

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF RESPONDENT LOCAL 557, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Respondent Local 557, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America submits this brief on the merits.

OPINIONS BELOW

The initial opinion of the district court (Pet. App. B3-B15) is reported in 510 F. Supp. 716. The subsequent opinion of the district court (Pet. App. B16-B29) is reported in 524 F. Supp. 721. The opinion of the court of appeals (Pet. App. B1-B2) is unpublished, but reported in 679 F.2d 879.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was issued on April 19, 1982. The petition for a writ of certiorari was timely filed on June 29, 1982 and a writ of certiorari was granted on November 29, 1982. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved are reprinted as an Appendix to this Brief.

STATEMENT OF THE CASE

Petitioner Philip DelCostello was terminated by Anchor Motor Freight, Inc. (Anchor) in June, 1977 after refusing an order. At the time of his termination, Petitioner was represented by Local 557, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Local 557). Anchor and Local 557 were parties to the National Master Automobile Transporters Agreement and supplemental agreements (collectively referred to as the Agreement). The Agreement created a structure for the processing of grievances of employees, culminating in final and binding arbitration before the Eastern Conference Automobile Transporters Joint Arbitration Committee (Joint Committee) (JA 211-212).[1]

[1] In the Brief of Teamsters for a Democratic Union (TDU) as *Amicus Curiae* in Support of Petitioner, to which Respondent Local 557 has objected, it is contended that the Agreement's grievance resolution machinery does not constitute the equivalent of arbitration. However, the decisions of identically-structured joint arbitration committees as involved herein have been treated by this Court as arbitration awards. *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56 (1981); *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976); *Humphrey v. Moore*, 375 U.S. 335 (1964); *General Drivers v. Riss & Co.*, 372 U.S. 517 (1963). Also, as noted by TDU, this issue has not been raised by any party to this proceeding (Motion of TDU for Leave to File a Brief as *Amicus Curiae* at 2), and therefore should not be

Local 557 processed a grievance challenging Petitioner's termination. Unable to arrive at an amicable resolution of the issue, Local 557 submitted the matter for resolution by the Joint Committee. An arbitration award upholding Petitioner's termination was issued by the Joint Committee on July 19, 1977.

One month later a Business Agent of Local 557 sent Petitioner a copy of the minutes of the arbitration hearing, and advised Petitioner that they were to be submitted for approval at a scheduled meeting of the Joint Committee. Petitioner was invited to make any corrections he determined to be appropriate, in a manner akin to the presentation to a deponent of a deposition transcript for review (JA 69). Petitioner responded by a letter dated September 14, 1977 asserting dissatisfaction with the grievance process, but making no request for a rehearing of his case (JA 80-84).

Although possessing all information necessary to initiate his lawsuit by August 20, 1977, 524 F. Supp. at 722, Petitioner waited until March 16, 1978 to file an action. His Complaint, which in effect sought to vacate the July, 1977 Joint Committee award, was filed more than seven (7) months after the award became final. The action was brought pursuant to Section 301 of the Labor Management Relations Act [29 U.S.C. § 185(a)].

Respondents Local 557 and Anchor moved for summary judgment on grounds of limitations, *inter alia*. This theory was premised on Maryland's thirty day period for vacation of arbitration awards. Md. R.P. E2 and E4; Md. Cts. & Jud. Proc. Code Ann. § 3-224. The district court rejected these positions, 510 F. Supp. at 720, but noted that the same limitations issue was pending before the Supreme Court.

---

considered. *United Parcel Service, Inc. v. Mitchell, supra*, 451 U.S. at 60 n. 2; *Bell v. Wolfish*, 441 U.S. 520, 532 n. 13 (1979); *Knetsch v. United States*, 364 U.S. 361, 370 (1960).

When the Court resolved the limitations issue in *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56 (1981), both Respondents urged the district court to reconsider its earlier ruling in light of *Mitchell*. Petitioner's response challenged the retroactive application of *Mitchell*, the application of *Mitchell* to Local 557 and the reasonableness and constitutionality of a thirty day limitations period. Petitioner declined to raise any contention concerning adoption of the limitations period utilized for unfair labor practice charges under the National Labor Relations Act (JA 276) and that issue was not considered by the district court. The district court held that *Mitchell* could be retroactively construed to apply to the case at bar and that Maryland's thirty day period for vacation of an arbitration award was the controlling limitations period governing claims against both Respondents.

Petitioner subsequently appealed the judgment to the Court of Appeals for the Fourth Circuit. On appeal, Petitioner reiterated many of his arguments offered below and added the contention that 29 U.S.C. § 160(b) [Labor Management Relations Act of 1947, as amended, § 10(b)] should govern limitations in fair representation actions arising under 29 U.S.C. § 185. The Fourth Circuit gave no consideration to that issue in affirming the lower court's judgment.

A petition for a writ of certiorari followed, in which Petitioner asked the Court to review three questions. These issues concerned the applicability of the *Mitchell* holding to Local 557, the propriety of the usage of § 10(b) of the National Labor Relations Act, and whether or not *Mitchell* should be afforded retroactive effect. On November 29, 1982, this Court issued a writ of certiorari to review the decision of the Fourth Circuit on all issues. However, the Brief for Petitioner fails to address the first question, except for a reference indicating a limited degree

of support for Local 557's views on this subject (Brief for Petitioner at 34-35).

SUMMARY OF ARGUMENT

I. In *United Parcel Service, Inc. v. Mitchell,* 451 U.S. 56 (1981) the Court held that the appropriate limitations period for a breach of contract action by an employee against his employer was the state's statute of limitations for vacation of arbitration awards. That the employee must first prove that his union breached its duty of fair representation before suing his employer for breach of the collective bargaining agreement removes the litigation from normal contract claims and contract statutes of limitation. 451 U.S. at 62. Proof of union wrongdoing should be governed by the same limitations standard when the claim is directed against the union itself.

Application of the relatively short limitation periods of state arbitration laws to claims against unions enhances federal labor policy. Arbitrations may be speedily afforded precedential value in the development of the "common law of the shop".

II. Adoption of the limitations provisions of the National Labor Relations Act would be an unwarranted intrusion into a legislative function. Congressional silence concerning the appropriate limitations period for employee-initiated § 301 actions indicates a desire to rely on state limitations periods. This conclusion is magnified by seventeen years of congressional inaction following *Auto Workers v. Hoosier Corp.,* 383 U.S. 696 (1966) wherein the Court eschewed the same limitations concept espoused by Petitioner.

Usurpation of the legislative function is particularly inappropriate in this case. Petitioner did not argue in favor of a uniform federal statute in the district court. Neither lower court has passed on Petitioner's contention

that limitations were tolled, a conclusion necessary for him to benefit from the prolonged limitations period he seeks.

III. Retroactive application of the holding of *Mitchell* to the instant case is appropriate, pursuant to the three-pronged test established by the Court in *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971). As recognized within the opinion itself, 451 U.S. at 61, *Mitchell* was the logical product of past decisions of the Court. *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976) established the vacation of an adverse arbitration award to be the prerequisite of an employee's allegation that the collective bargaining agreement was breached. *Auto Workers v. Hoosier Corp., supra*, emphasized the importance of speed and finality in the administration of collective bargaining agreements, as well as reliance upon state law to govern the limitations period for litigation concerning such contracts. The combined impact of *Hines* and *Hoosier* mandated the result achieved in *Mitchell*.

No federal decisions existed at the time of Petitioner's claim which would lead him to reasonably believe he could forestall litigation. However, several district courts had already ruled that post-arbitration § 301 actions by employees were to be governed by the state limitations period for vacation of arbitration awards. Application of *Mitchell* to the instant case would be harmonious with the rule of that case and would produce no inequity.

ARGUMENT

I.

STATE STATUTES OF LIMITATIONS GOVERNING VACATION OF ARBITRATION AWARDS APPLY TO ALL PARTIES IN A POST-ARBITRATION ACTION ALLEGING BREACH OF THE UNION'S DUTY OF FAIR REPRESENTATION AND BREACH OF A COLLECTIVE BARGAINING AGREEMENT.

A. The Rationale Of *Mitchell* Is Dependent Upon Application Of The State Statute Of Limitations For Vacation Of Arbitration Awards To Employee Claims Against Unions

In *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56 (1981), this Court held that the appropriate period of limitations for an employee's post-arbitration Section 301 action against his employer was contained within the state's statute for vacation of an arbitration award. Respondent Local 557 contends that the reasoning of *Mitchell* directs usage of the same period in an action against the employee's union.

The *Mitchell* employee was terminated on January 13, 1977, but his labor representative challenged that action. The issue of termination was submitted to binding arbitration in the form of a joint committee panel, which upheld the employer on February 16, 1977. Legal action was not initiated until July 20, 1978. 451 U.S. at 58.

The district court granted summary judgment to both employer and union defendants, holding that the action was most closely analogous to a suit to vacate an arbitration award, so that New York's ninety day statute of limitations applied. The court of appeals reversed, holding that the State's six year period for breach of contract was appropriate. 624 F.2d 394 (2d Cir. 1980). The employer alone sought and obtained a writ of certiorari, 449 U.S. 898 (1980), although the union did supply a brief to the Court which supported the employer's position. 451 U.S. at 57.

In reversing the court of appeals, this Court looked to some of its prior case law which interpreted the congressional failure to enact a statute of limitations for § 301 suits as requiring timeliness of actions "to be determined, as a matter of federal law, by reference to the appropriate state statute of limitations". *Auto Workers v. Hoosier*

Corp., 383 U.S. 696, 704-705 (1966). Selection of the appropriate state limitation period was the Court's next task. The parties argued the applicability of the State's limitations statutes utilized by the courts below.

Since the adverse arbitration decision in *Mitchell*, as here, was binding on all parties, the employee was compelled to show that his union had failed to fairly represent him during the arbitration before he could reach the merits of his breach of contract allegation. The necessity of a successful attack upon the union's conduct, unrelated to a breach of contract by the employer, made the lawsuit "more analogous to an action to vacate an arbitration award than to a straight contract action". 451 U.S. at 62 (footnote omitted). Accordingly, the ninety day limitations period for vacating arbitration awards was applied.

Thus, it was the fair representation claim against the union which occasioned utilization of the shorter limitations period. The employer enjoyed the benefit of the same limitations period, since the action against it for breach of contract was derivative to the action against the union.

The conclusion that *Mitchell* was intended to apply to unions is buttressed by the separate opinion of Justice Stevens. He recognized that the Court's language and reasoning would be interpreted to apply to unions. 451 U.S. at 72. The majority opinion did not deny this characterization, nor was the language altered to restrict its precedential impact to employers.

Application of the *Mitchell* standard to the facts underlying this case leads to the conclusion that the action was untimely filed. The Maryland Arbitration Act creates a thirty day limitations period for actions to vacate arbitration awards. Md. Cts. & Jud. Proc. Code Ann. § 3-224. Although the substantive provisions of the State Arbitra-

tion Act are inapplicable to labor disputes, Md. Cts. & Jud. Proc. Code Ann. § 3-206(b), this exclusion is cured by Maryland Rules of Procedure E2 and E4. Those Rules apply the State Arbitration Act's procedural framework to matters outside the Act's ambit. Accordingly, as found by the lower courts, the failure of Petitioner to bring this action within thirty days of receipt of the Joint Committee's decision renders his claims untimely against both Anchor and Local 557.

B. Federal Labor Policy Requires That Unions Be Subjected To No Greater Period Of Limitations Than Are Employers

Perhaps the most common theme running throughout this Court's opinions concerning the timeliness of Section 301 actions is the concern for prompt finality of determinations reached through contractually-established grievance and arbitration procedures. *United Parcel Service, Inc. v. Mitchell, supra,* 451 U.S. at 63; *Auto Workers v. Hoosier Corp., supra,* 383 U.S. at 707. This important policy consideration would be undercut by application to unions of any limitations period greater than that which is used in actions against employers.

An employee's proof that his union breached its duty of fair representation is sufficient to upset what would otherwise be a final and binding arbitration award. *Hines v. Anchor Motor Freight, Inc., supra,* 424 U.S. at 567. So long as a union's handling of an arbitration case is subject to judicial challenge, so too is the finality of the arbitration award. In efforts to resolve future grievances, or as precedent in future arbitrations, an employer could not promptly rely upon its arbitration victory until it became established that the union put forth an adequate effort. During the period of prolonged limitations, unions would be unwilling to concede grievances arising in

instances similar to those in which their past arbitration efforts were unsuccessful for fear of multiplying potential liability in successive lawsuits. The fruit of *Mitchell*, with its promise of speedy development of the "common law of the shop" would be denied to all parties to the arbitration process. *United Steelwkrs. of Am. v. Warrior & Gulf N. Co.*, 363 U.S. 574, 579-582 (1960).

One significant aspect of an extended limitations period for unions arises from the role of the union in defense of the breach of contract aspect of the litigation. Since the employer would not be present to shoulder this portion of the litigation, the union which previously had been advocating the view that the employer's actions were in breach of the contract would suddenly become charged with defense of the employer's position. This conflict in positions would serve to undermine the union's credibility with its membership and the public generally.

C. Petitioner DelCostello Has Abandoned The Issue Of Distinct Limitations Against Local 557

Perhaps the best reason to subject Respondent Local 557 to the same limitations period as governs the claim against Respondent Anchor is the fact that Petitioner DelCostello now agrees that this is the best approach. After raising the issue of a distinct period of limitations as one ground for the granting of a writ of certiorari (Petitioner's Brief for Certiorari at 11-12), Petitioner now supports the concept of a common statute of limitations for employer and union, although he urges the utilization of a longer statute (Brief for Petitioner at 34-35). While Local 557 questions whether a writ of certiorari would have been granted if Petitioner had earlier indicated his happiness with lower court rulings on this issue, it welcomes Petitioner's belated conversion.

II.

ADOPTION OF THE SIX MONTH LIMITATIONS PERIOD OF THE NATIONAL LABOR RELATIONS ACT IS INAPPROPRIATE WHERE STATE LAW OFFERS AN ANALOGOUS LIMITATIONS PERIOD.

In contending that this Court should borrow a statute of limitations from the National Labor Relations Act [29 U.S.C. § 160(b)] Petitioner asks for the end of well-established judicial doctrine on the law of limitations. This radical proposal is particularly inappropriate in light of Petitioner's refusal to raise this argument before the district court.

A. State Statutes Of Limitations Govern The Timeliness Of Federal Causes Of Action Unless Congress Has Specifically Provided Otherwise

Where Congress has created a federal cause of action, but no period of limitation for initiation of litigation, federal courts apply appropriate state limitations periods. *McCluny v. Silliman,* 28 U.S. 676, 678 (1830). This principle has been applied over a broad spectrum of federal causes of action. E.g., *Runyon v. McCrary,* 427 U.S. 160, 179-182 (1976) (Civil Rights Act of 1866); *Auto Workers v. Hoosier Corp., supra,* 383 U.S. at 701-704; *Cope v. Anderson,* 331 U.S. 461, 463 (1947) (National Bank Act); *O'Sullivan v. Felix,* 233 U.S. 318, 322 (1914) (Civil Rights Act of 1871); *Chattanooga Foundry v. Atlanta,* 203 U.S. 390, 397 (1906) (Sherman Act); *Campbell v. City of Haverhill,* 155 U.S. 610 (1895) (Patent Act). The basis for this doctrine is the assumption that congressional silence on the limitations aspect of a federal claim is to be interpreted as a desire to utilize state periods. *Auto Workers v. Hoosier Corp., supra,* 383 U.S. at 703-704. Where Congress objects to state limitation periods, it is capable of amending its original enactment to provide a

uniform limitations period. E.g., 69 Stat. 283, 15 U.S.C. § 15b (1964 ed.) (Clayton Act); 35 U.S.C. § 286 (Patent Act). Cf. *Grigg v. U.S.*, 277 U.S. 582 (1928) (World War Veterans Act, 1924, 38 U.S.C. § 784).

B. Congressional Silence On The Appropriate Limitations Period For A § 301 Action Indicates Satisfaction With Application Of State Limitation Periods

In 1947, Congress enacted legislation which constitutes the center of the instant controversy. It passed a six month period to govern unfair labor practice charges presented to the National Labor Relations Board. 61 Stat. 146, 29 U.S.C. § 160(b). Simultaneously it enacted Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a), which contains no limitations period.

The conduct of a labor organization charged with representing employees may be challenged under either law. *Vaca v. Sipes*, 386 U.S. 171 (1967). Congress did not intend to limit employees to the administrative remedy afforded by the National Labor Relations Board. *Id.* at 182-183. Indeed, the distinct procedural provisions growing out of the two enactments constituted one basis for the Court's determination that the National Labor Relations Act did not pre-empt the area of a union's duty of fair representation. *Id.* at 181-182.

Petitioner seeks to blur the alternate remedies available to disgruntled employees by seeking an identical limitations period under each. A previous effort along these lines was rejected by this Court.

In *Auto Workers v. Hoosier Corp., supra*, a union sued an employer under § 301 to collect vacation monies allegedly owed employees pursuant to a collective bargaining agreement. The employer challenged the timeliness of this action under an analogous state law, which the union

contended to be without application. Instead the union sought creation by the Court of a uniform federal limitations period. The Court refused to engage in "so bald a form of judicial innovation". 383 U.S. at 701.

The value of uniformity is strongest where its presence would enhance the functioning of collective bargaining and internal dispute resolution. However, limitations are an issue only where one of these functions has collapsed. Accordingly, the Court concluded that the judicial legislation sought by the union was not warranted, and that state law should be applied. *Id.* 702-703.

Like *Hoosier,* the instant case is also brought under § 301, and makes no reference to the National Labor Relations Act (JA 3). It alleges a breakdown of the contractual dispute resolution process. As in *Hoosier,* Petitioner asks the Court to embark on a course of judicial legislation, thereby usurping a role properly reserved to Congress. The *Hoosier* Court recognized the congressional failure to provide a uniform limitations period as being an insufficient excuse to invent one. *Id.* at 703. Seventeen years after that ruling, Congress remains silent and Petitioner is without a basis to alter the Court's past interpretation of that silence.

C. Application Of The Six Month Limitations Period Of § 10(b) Is Inappropriate In This Case

In an *amicus curiae* brief filed in *Mitchell,* the American Federation of Labor and Congress of Industrial Organizations urged the Court to adopt the six month limitations period of § 10(b) of the National Labor Relations Act in § 301 fair representation cases. The Court refused to apply this theory, noting both that it had not been raised in the case and that the action was commenced outside both the statutory six month limitations period and New York's ninety day period. 451 U.S. at 60 n. 2. Those same shortcomings are present in the instant case.

In replying to the Joint Motion for Reconsideration filed in the district court by Local 557 and Anchor, Petitioner argued, *inter alia*, that Maryland's thirty day limitations period was unconstitutional because it was unreasonably short.[2] Petitioner recognized that *Mitchell* had approved New York's ninety day limitations period, but contended that Maryland's thirty day period offered an insufficient opportunity to prepare a lawsuit challenging a detrimental arbitration ruling. Petitioner asserted that although "it would be presumptuous to expect this Court to promulgate a new national policy establishing six month limitations for all 301 actions, it is quite appropriate for the Plaintiff to assert that the thirty day limitation period is unreasonably short" (JA 276). Since it was not confronted with the § 10(b) issue, the district court gave it no mention in either of its opinions. In affirming, the circuit court made no mention of § 10(b). Where opinions of the district court and circuit court are devoid of any reference to a particular issue, as here, the Court has held that it would not consider it in the first instance. *Ramsey v. Mine Workers,* 401 U.S. 302, 312 (1971).

Even if Petitioner had preserved his § 10(b) contention, it would be unavailing. Petitioner initiated this litigation on March 16, 1978, seven months after he was aware his termination had been upheld in arbitration, and outside the six month period he asks this Court to adopt. Petitioner seeks to avoid the consequences of his delay by arguing that limitations were tolled until December, 1977.

In support of this position, Petitioner distorts the opinion of the district court. The district court did not decide the issue of tolling of limitations, since the action was not filed until Maryland's thirty day period had run. Thus, even assuming Petitioner's tolling argument was

[2] Although it was pressed before the district court, Petitioner has abandoned this constitutional question.

meritorious, the action was untimely filed. 524 F. Supp. at 723. Since Petitioner failed to argue the applicability of § 10(b), the district court was not required to decide whether or not limitations were tolled, and this Court should not be the first tribunal to pass on that question.

III.

THE COURT'S RULING IN *UNITED PARCEL SERVICE, INC. v. MITCHELL* SHOULD NOT BE LIMITED TO PROSPECTIVE APPLICATION.

The question of whether or not to give retroactive application to statements of law by appellate courts has been raging through centuries of English and American jurisprudence. On the one hand is the view that the law is a constant presence merely awaiting discovery and identification by judges. The other philosophy shows a concern for litigants who rely upon the current status of the law in determining legal rights and responsibilities. *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971) constitutes an effort to blend and balance these competing concerns.

While the *Chevron Oil* case was still pending pre-trial discovery, this Court ruled in *Rodrigue v. Aetna Casualty Co.*, 395 U.S. 352 (1969) that the appropriate statute of limitations of actions arising under the Lands Act should be governed by the analogous state law. *Rodrigue*, like *Chevron Oil*, arose in Louisiana which applied a one year limitations period to such causes of action, as distinguished from a long line of Fifth Circuit decisions which allowed a longer limitations period. The *Chevron Oil* Court composed a three-part test to be utilized in deciding whether retroactive application of its decisions is warranted. These factors are:

1. Whether the newly announced decision establishes a new principle of law either by overruling clear past precedent upon which the litigants have relied or by deciding a question of first impression whose resolution was not foreshadowed;

2. Whether retrospective operation of the doctrine would enhance or hinder the policies of the newly announced rule; and

3. Whether substantial inequitable results would follow if the new ruling were applied retroactively.

404 U.S. at 106-107.

Normally, determinations of this Court are afforded retroactive application. *National Association of Broadcasters v. F.C.C.*, 554 F.2d 1118, 1130 (D.C. Cir. 1976). Lower courts will apply judicial case law as it exists at the time of decision. *Cash v. Califano*, 621 F.2d 626, 628 (4th Cir. 1980); *Baker v. Bell*, 630 F.2d 1046, 1056 (5th Cir. 1980). Thus, all three factors listed in *Chevron* must favor prospective application before a decision will be denied retroactive effect. *Valencia v. Anderson Bros. Ford*, 617 F.2d 1278, 1289 (7th Cir. 1980). In the instant case, none of the *Chevron* factors favor such a limitation on the applicability of *Mitchell*.

A. *Mitchell* Did Not Establish A New Principle Of Law

The reasoning of *Mitchell* flowed from this Court's earlier rulings concerning deference to state limitation standards in the context of challenges to final arbitration awards. The Court indicated that its ruling was bottomed on the holdings of *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976) and *Auto Workers v. Hoosier Corp.*, 383 U.S. 696 (1966).

Reversing the decision of the Second Circuit Court of Appeals, the Court noted that *Hines* "strongly supports borrowing the limitations period for actions to vacate arbitration awards". 451 U.S. at 61. That conclusion was based on the prerequisite that the disgruntled employee prove union wrongdoing in order to overturn the otherwise

final arbitration award. Only when that award was vacated could the employee level his breach of contract allegation against the employer. 451 U.S. at 62-63 n. 4.

The logic of *Hines* was as available to Petitioner as it was to the *Mitchell* Court. Where an apparent foreshadowing of a subsequent ruling is present, retroactive interpretation of the later decision is appropriate. Indeed, the Court has held that even in the presence of scattered authority contrary to its eventual ruling, retroactive application of the subsequent decision is appropriate. In *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481 (1968), an action was brought under § 2 of the Sherman Act concerning the alleged monopolization of the shoe machine industry. The Third Circuit Court of Appeals held in that case that damages could commence only from the date of the Supreme Court's ruling in *American Tobacco Co. v. U.S.*, 328 U.S. 781 (1946) which, according to the circuit court, had changed the standard of proof required in such Sherman Act cases. In *American Tobacco,* this Court had indicated that monopoly power alone, even absent proof of predatory practices, could constitute a violation of the Sherman Act. In reversing the Third Circuit in *Hanover Shoe,* this Court gave retroactive effect to the rule it enunciated in *American Tobacco.* The Court pointed out that the *American Tobacco* opinion had not "indicated that the issue involved was novel, that innovative principles were necessary to resolve it, or that the issue had been settled in prior cases in a manner contrary to the view held by those courts". 392 U.S. at 496. Where, as here and unlike *Chevron,* the Court did not indicate that it felt it was adopting a radically new interpretation of existing authority, retroactive application is appropriate. 392 U.S. at 496-497.

Thus, where the status of the law is murky, litigating parties rely upon their interpretations of lower court

decisions at their own peril. However, a review of the status of fair representation litigation at the time Petitioner's alleged cause of action arose not only reveals no murkiness, but instead shows that the law was not at all supportive of his position concerning limitations. The ruling of the Court in *Mitchell* overturned no federal precedent in effect at the time by which the Petitioner should have initiated this action.

After extreme reliance in the district court upon cases not involving arbitration proceedings (JA 235-246), Petitioner appears to have come to the realization that this dependence has been misplaced (Brief for Petitioner at 36 n. 13). Notwithstanding this concession, Petitioner has cited numerous opinions which fail to establish that *Mitchell* overruled clear past precedent. Much of the authority relied upon by the Petitioner does not involve employee dissatisfaction with arbitration awards, but rather involves grievances which the union chose not to process fully.[3] Other authority relied upon by Petitioner involves decisions in which no party urged the applicability of a state limitations statute governing the vacation of arbitration awards.[4]

---

[3] *Gallagher v. Chrysler Corp.*, 613 F.2d 167 (6th Cir. 1980); *Price v. Southern Pacific Transportation Co.*, 586 F.2d 750 (9th Cir. 1978); *Sanderson v. Ford Motor Co.*, 483 F.2d 102 (5th Cir. 1973); *Kennedy v. Wheeling-Pittsburgh Steel Corp.*, 81 LRRM 2349 (4th Cir. 1972); *Abrams v. Carrier Corp.*, 434 F.2d 1234 (2d Cir. 1970); *DeArroyo v. Sindicato de Trabajadores Packing House*, 425 F.2d 281 (1st Cir. 1970); *Grant v. Mulvihill Brothers Motor Service, Inc.*, 428 F. Supp. 45 (N.D. Ill. 1976); *Howard v. Aluminum Wkrs. Intern. U.*, 418 F. Supp. 1058 (E.D. Va. 1976), aff'd 589 F.2d 771 (4th Cir. 1978); *Mikelson v. Wisconsin Bridge and Iron Co.*, 359 F. Supp. 444 (W.D. Wis. 1973).

[4] *Warren v. I.B.T.*, 544 F.2d 334 (8th Cir. 1976); *Butler v. Local U. 823 International Brotherhood of Teamsters*, 514 F.2d 442 (8th Cir. 1975), *cert. denied* 423 U.S. 924 (1976); *Brooks v. Southwestern Transportation Co.*, 97 LRRM 2616 (N.D. Tex. 1978); *DeVries v. Motor Freight System*, 91 LRRM 2764 (N.D. Ohio 1976).

By limiting review to those cases which involve arbitration decisions in which some party argued that the applicable limitations period is that used in state law for vacation of an arbitration award, the Petitioner's authority is reduced to two cases only. His current reliance on those cases is unwarranted.

Smart v. Ellis Trucking Co., Inc., 409 F. Supp. 129 (E.D. Mich. 1976) was an action initiated after an adverse arbitration ruling. The employer argued that the portion of the claim involving breach of contract was barred by the Michigan twenty day period for vacation of arbitration awards, and additionally, that the arbitration award was final. The district court refused to review the merits of the arbitration award, thereby avoiding the issue of limitations. On appeal, the Sixth Circuit applied (retroactively) the newly recited doctrine of *Hines v. Anchor Motor Freight, Inc., supra,* to overturn the district court's basis of decision. 580 F.2d 215 (6th Cir. 1978). The circuit court then, for the first time in the proceeding, determined that the twenty day limitation period was inappropriate. The Sixth Circuit's decision was issued on July 25, 1978, over one year after the origin of Petitioner's claim and four months after the initiation of this action. Petitioner could not have used *Smart,* a decision rendered after he filed this case, as a basis for forbearance from suing.

Lehto v. Underground Construction Co., 69 Cal. App. 3d 933 (1977), like *Smart,* does not appear to be supportive of retroactive application of *Mitchell* at first glance. That state court decision refused to apply California's one hundred day period for review of arbitration awards, but rather used the four year period for contract decisions. Issued a scant few months before Petitioner's alleged cause of action arose, it is in direct conflict with two earlier rulings of California's federal district courts, *Elrod v. Western Conference of Teamsters,* 77 LRRM 2619 (C.D.

Cal. 1971) and *Howerton v. J. Christenson Co.*, 76 LRRM 2937 (N.D. Cal. 1971). Both federal cases require an employee seeking relief against his employer or union after an unsuccessful arbitration effort to initiate that action within one hundred days. Identical holdings were rendered by various district courts which considered the question in years prior to the termination of Petitioner. *Barbarino v. Anchor Motor Freight, Inc.*, 421 F. Supp. 1003 (W.D. N.Y. 1976); *DeLorto v. United Parcel Service, Inc.*, 401 F. Supp. 408 (D. Mass. 1975); *Hill v. Aro Corp.*, 275 F. Supp. 482 (N.D. Ohio 1967). Cf. *United Mine Workers of Am. v. Jones & Laughlin Steel Corp.*, 378 F. Supp. 1206 (W.D. Pa. 1974); *Hana Heating & AC Co., Inc. v. Sheet Metal Workers Local Union 38*, 378 F. Supp. 1001 (S.D. N.Y. 1974); *International Bro. of Teamsters, Local 249 v. Motor Freight Express, Inc.*, 356 F. Supp. 724 (W.D. Pa. 1973).

It was neither the intent nor effect of this Court to overrule or radically change the status of the law with *Mitchell*. As early as 1967 federal courts had been applying similar limitations periods in order to conform with the intertwined national labor policies of encouraging the rapid resolution of labor disputes and ensuring the finality of grievance arbitration awards. At the time when Petitioner's claims could have been timely filed, no federal court decision existed to support alleged reliance on some now-invalid legal principle when he deferred the commencement of his action. Reliance, in order to make a court resort to prospective relief, must be reasonable. *Bronze Shields, Inc. v. N.J. Dept. of Civil Serv.*, 667 F.2d 1074, 1085 (3d Cir. 1981). Where, as here, there is no reversal of a prior position, no novel issue, and no clearly declared judicial doctrine in the circuit which was fundamentally altered by the new decision, reliance is unjustified. *Lawson v. Local 100*, ___ F.2d ___, No. 81-3722 (6th Cir. Jan. 17, 1983) (appended to Brief of

Respondent Anchor Motor Freight, Inc.); *Service Emp. Intern. Union, Etc. v. Office Ctr., Etc.*, 670 F.2d 404 (3d Cir. 1982).

B. Retroactive Application Of The Limitations Policy Established By *Mitchell* Will Promote The Policies Enunciated Therein

By their very operation, statutes of limitation work to speed up judicial processes by compelling litigants to promptly state their claims at penalty of forfeiture. This value is enhanced when applied to the labor relations context.

"[R]elatively rapid disposition of labor disputes" is a touchstone of a federal labor policy which is bottomed on arbitration. *Hoosier Corp., supra,* 383 U.S. at 707. The *Mitchell* opinion placed a high value on the speed of ultimate grievance resolution. Of less concern was the right of an employee to tardily seek relitigation of his grievance.

The rule to be applied from *Mitchell* and the policy it promotes are identical, compelling retrospective application in this case. The congressionally described need for predictability in labor relations mandates the rejection of claims raised by those employees which would retard the grievance procedure. *Mauget v. Kaiser Engineers, Inc.*, 546 F. Supp. 486 (S.D. Ohio 1982); *Lewis v. Harbison-Walker Refractories*, 542 F. Supp. 1381 (N.D. Ind. 1982); *Kikos v. International Brotherhood of Teamsters*, 526 F. Supp. 110 (E.D. Mich. 1981).

Retroactive application of *Mitchell* in this case enhances the policy considerations enunciated by the Court. Accordingly, the denial of Petitioner's request for an exemption from retroactive application should now be affirmed.

C. Retroactive Application Of *Mitchell* Will Not Produce Substantial Inequitable Results

Mere deprivation of an individual's remedy does not bar retroactive application of a subsequent rule of law. In analogous situations courts have often decided to apply new case law retroactively, despite the fatal impact such action may have on an individual claim.

Holzsager v. Valley Hospital, 646 F.2d 792 (2d Cir. 1981) reinforces this view of the equities involved in retroactive application of a judicial ruling which limits remedies. It concerned a medical malpractice action filed in a New York court against a New Jersey health care institution for alleged wrongdoings committed on its premises. The initiation of the suit was postponed for twenty months while the surviving spouse redomiciled from New Jersey to New York. The *Holzsager* plaintiff bottomed her theory of New York jurisdiction on an attachment of an insurance policy issued to the hospital from a New York insurer. Such action was permitted under *Seider v. Roth*, 17 N.Y.2d 111, 269 N.Y.S.2d 99, 216 N.E.2d 312 (1966). While the malpractice action was pending, this Court issued its opinion in *Rush v. Savchuk*, 444 U.S. 320 (1980), which held that personal jurisdiction could not be obtained over a non-resident defendant through *quasi-in-rem* attachment of an insurance policy. By the time the matter of retroactive application of *Rush* was decided, New Jersey's two year malpractice limitation had expired. Nevertheless, the appellate court held that application of the standards of *Chevron Oil Co. v. Huson, supra*, warranted retroactive application of *Rush*. This conclusion was reached despite the finding that the *Holzsager* plaintiff met the first *Chevron* criterion, that of overruling clear past precedent. 646 F.2d at 792. The claim failed on the second and third points. No substantial inequity was determined, even though the claim would be defeated on limitations,

because the Supreme Court had imposed the same penalty on the *Rush* plaintiff. 646 F.2d at 797 n. 3. Since the Court "is well aware of how to avoid the effects of applying one of its rulings retroactively", its refusal to do so gave adequate guidance to the *Holzsager* court.[5] *See also Cates v. Trans World Airlines, Inc.*, 561 F.2d 1064, 1073 (2d Cir. 1977); *Schaefer v. First National Bank of Lincolnwood*, 509 F.2d 1287 (7th Cir. 1975), *cert. denied*, 425 U.S. 943 (1976).

Since the development of a distinct rule on limitations for litigants dissatisfied with an arbitration rule was foreseeable and consonant with the scattered decisions which had addressed the question, the equities favor retroactive operation of the Court's *Mitchell* decision.

[5] Indeed the Court has recently given directions that a decision should be afforded only prospective application. *Northern Pipeline Const. v. Marathon Pipe Line Co.*, ___ U.S. ___, 102 S. Ct. 2858, 2880 (1982). No such action was taken in *Mitchell*, and that decision operated retroactively.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

CARL S. YALLER,
(Counsel of Record),
BERNARD W. RUBENSTEIN,
EDELMAN AND RUBENSTEIN, P.A.,
Ten Light Street — Suite 2400,
Baltimore, Maryland 21202,
(301) 752-6160,
Attorneys for Respondent,
Local 557, International
Brotherhood of Teamsters,
Chauffeurs, Warehousemen
and Helpers of America.

APPENDIX

STATUTORY PROVISIONS INVOLVED

29 U.S.C. § 160(b):

> Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided,* That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934.

29 U.S.C. § 185(a):

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Maryland Courts & Judicial Proceedings § 3-224(a):

> *Petition.* — (1) Except as provided in paragraph (2), a petition to vacate the award shall be filed within 30 days after delivery of a copy of the award to the petitioner.
>
> (2) If a petition alleges corruption, fraud, or other undue means it shall be filed within 30 days after the grounds become known or should have been known to the petitioner.

Maryland Rules of Procedure E2:

> After a final award has been made in writing in an arbitration to which the Maryland Uniform Arbitration Act is inapplicable, court proceedings may be had to confirm, vacate, modify, correct, or enter judgment on the award. In any such case, the provisions of the Maryland Uniform Arbitration Act concerning such proceedings shall be applicable.

Maryland Rules of Procedure E4:

> The procedure for application to a court otherwise than as provided in Rule E2 of this Subtitle for any relief in connection with an arbitration to which the Maryland Uniform Arbitration Act is inapplicable, shall be as nearly as practicable the same as that provided for such an application in arbitration to which said act applies. This Rule affects only the procedure in such proceedings and does not establish a right to have any question determined by court.